

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

KELLOGG BROWN & ROOT  
SERVICES, INC.

Plaintiff,

VS.

SANDERS BROS., INC.

Defendant.

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CIVIL ACTION NO. 4:10-cv-01441

**MOTION TO INTERVENE**

COMES NOW, WESTCHESTER FIRE INSURANCE COMPANY, INC.  
(hereinafter Westchester), a corporation of the state of New York, and files this their  
Motion to Intervene and in support thereof would show as follows:

1. Kellogg Brown & Root Services, Inc. (hereinafter KBRS) brought this  
action seeking the Court to confirm an arbitration award issued March 25, 2010 in  
American Arbitration Association, Commercial Arbitration Tribunal, *Kellogg Brown &  
Root Services, Inc. (Claimant) and Sanders Bros., Inc. (Respondent)*, Case No. 70 421  
Y 00310 09.

2. Westchester executed Subcontract Performance Bond K07190967  
(attached as Exhibit "A"), the same contract that was the subject of the arbitration  
between KBRS and Sanders, KBRS has made demand upon Westchester to pay the  
amount in the arbitration award under the Subcontract Performance Bond. See  
April 27, 2010 letter from KBRS attached as Exhibit "B."

3. Westchester entered into an Agreement of Indemnity (attached hereto as Exhibit "C"). The indemnitors are Sanders Bros., Inc. (the defendant herein), Sanders Bros. Holdings, Inc., ProServ Sanders, Inc., Alabama Southeast Mechanical-Sanders, Inc., G. Jerome Ducote, Jr., and Samuel F. Eakin. Eakin and Decote both executed the Agreement individually and in their corporate capacity. Pursuant to the Agreement of Indemnity the idemnitors agreed, among other things, to indemnify Westchester for any payments or expense it may incur by reason of having executed the Subcontract Performance Bond.

4. The indemnitors, despite requests that they defend and indemnify Westchester, have declined to do so.

5. Westchester seeks to intervene in this cause pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure. Rules 24 holds that on timely motion, the Court **must** permit anyone to intervene who qualifies under 24(a)(2). (Emphasis added) As KBRS will seek to impose the obligation to pay the arbitration award upon Westchester, and as Westchester's indemnitors have declined to fulfill their indemnity obligations, this action qualifies as an intervention of right.

6. Alternatively, Westchester seeks to intervene under F.R.C.P. 24(b)(1)(b) as Westchester has a claim or defense that shares with the main action a common question of law or fact.

7. Westchester attaches its Complaint in Intervention as Exhibit "D". Westchester seeks to intervene in the current suit, and to bring the individual and corporate indemnitors into the litigation.

WHEREFORE, PREMISES CONSIDERED, Westchester prays its Motion to Intervene be granted, the Court accept the Complaint in Intervention, that service be made upon Sanders Bros. Holdings, Inc., Pro Serv Sanders, Inc., Alabama Southeast Mechanical-Sanders, Inc., and Samuel F. Eakin, and for such other and further relief as to which they may show themselves justly entitled.

Respectfully submitted,

DONATO, MINX, BROWN & POOL, P.C.

s/Robert D. Brown

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ATTORNEYS FOR INTERVENOR,  
WESTCHESTER FIRE INSURANCE COMPANY,  
INC.

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record in accordance with the Texas Rules of Civil Procedure/ Federal Rules of Civil Procedure, on this the 19<sup>th</sup> July, 2010:

Chad J. Castille Randall Jones Serpe, Jones, Andrews, Callender & Bell, PLLC Three Allen Center 333 Clay St., Suite 3485 Houston, TX 77002 <i>Attorney for Plaintiff, Kellogg Brown &amp; Root Services, Inc.</i>	Via court notification
Cynthia Buck Brown Harper, Lambert & Brown, P.A. 420 East Park Ave., Suite 220 Greenville, SC 29601 <i>Attorney for Sanders Bros. Inc. - liquidation</i>	Via court notification

s/Robert D. Brown

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Robert D. Brown